

1 Rick Lawton, Esq.  
2 State Bar # 00694  
3 Law Office Rick Lawton Esq. P.C.  
4 5435 Reno Hwy, Fallon, Nevada 89406  
(775) 867-5599  
(775) 867-2559 -fax

5 ROBERT HAGER, ESQ.  
6 NEVADA STATE BAR # 1482  
Hager & Hearne  
7 245 East Liberty Street, Suite 110  
Reno, Nevada 89501  
(775) 329 5800  
(775) 329 5819 – facsimile

9 Attorney for Plaintiff

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE STATE OF NEVADA**

13 GRANT MATTHEW YOUNGREN,

14 Case No. 3:09-cv-00595-ECR-BLG

15 *Plaintiff,*

16 *vs.*

17 OWNIT MORTGAGE SOLUTIONS, INC., a  
18 California Corporation; FIRST MAGNUS  
19 FINANCIAL CORPORATION/CHARTER  
FUNDING (a Mortgage Broker);, a Foreign  
Corporation; LITTON LOAN SERVICING L.P.;  
AMY BLAZER, individually a Nevada Resident;  
20 MERSCORP, INC. a Virginia Corporation,  
MORTGAGE ELECTRONIC REGISTRATION  
21 SYSTEM INC., a Subsidiary of MERSCORP,  
INC., a Delaware Corporation [MERS] and  
DOES 1-25 CORPRORATIONS, DOES and  
22 ROES 1-25 individuals, [Partnerships, or  
anyone claiming any interest to the property  
described in the action

**MOTION TO STAY ALL FEDERAL  
PROCEEDINGS UNTIL THE  
MOTION TO REMAND TO THE  
THIRD JUDICIAL DISTRICT,  
STATE OF NEVADA IS HEARD**

**DEMAND FOR DISCLOSURE  
OF INDISPENSABLE PARTY**

24 *Defendants.*

25  
26 COMES NOW the Plaintiff, above named, by and through his attorney, RICK

LAWTON, Esquire of the Law Office of Rick Lawton Esquire, Prof. Corp., a Nevada Professional Corporation, and Hager and Hearne, and hereby respectfully Moves this Court for an Order Staying all Federal Proceedings in this matter pending a determination of the MOTION FOR REMAND.; and for a FURTHER ORDER, requiring Defendants who have appeared to disclose "indispensable parties."

This Motion is supported by all pleadings and papers of record, the points and authorities to follow, and any argument that may be presented on a hearing hereon.

1

## INTRODUCTION

On October 5, 2009 a Petition for Removal from Second Judicial District Court. Case Number CV-09-02548 was filed by Defendant Merscorp, Inc. a Virginia Corporation, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., a Subsidiary of MERSCORP, INC., a Delaware Corporation.

On October 7, 2009 Plaintiff filed a Motion To Remand To State Court contending that there is no substantial Federal question on the face of the Complaint; and that there is NOT complete diversity. Plaintiff indicates that the sole causes of actions involve:

**FIRST CAUSE OF ACTION** (Violation of Unfair Lending Practices, N.R.S. 598D.100)

**SECOND CAUSE OF ACTION (Conspiracy to Commit Fraud and Conversion)**

THIRD CAUSE OF ACTION (Permanent Injunction )

<u>FOURTH CAUSE OF ACTION</u>	(Fraud Through Omission)
<u>FIFTH CAUSE OF ACTION</u>	(Quiet Title Action)
<u>SIXTH CAUSE OF ACTION</u>	( Contractual Breach of the Duty of Good Faith and Fair Dealing)
<u>SEVENTH CAUSE OF ACTION</u>	(Tortious Breach of the Implied Duty of Good Faith and Fair Dealing)
<u>EIGHTH CAUSE OF ACTION</u>	(Civil Conspiracy)
<u>NINTH CAUSE OF ACTION</u>	(Racketeering (NRS 207.470)
<u>TENTH CAUSE OF ACTION</u>	(Unjust Enrichment)
<u>ELEVENTH CAUSE OF ACTION</u>	(Conspiracy to Commit Fraud Related to MERS System)
<u>TWELFTH CLAIM FOR RELIEF</u>	(Fraud in the Inducement)

Plaintiff has named the original Lender and successors in interest (unknown)<sup>1</sup>. Plaintiff has named loan officers, title officers, parties claiming status of "nominee" beneficiary under the Deed of Trust, as well as any claimed Collection Companies or (servicers) or assigns of any right title and interest to the Deed of Trust or Promissory Note (s).

On October 8, 2009, Defendant Litton Loan Servicing LP, a Delaware limited Partnership filed a Stipulation To Extend Time To Answer Or Otherwise Plead on.<sup>2</sup>

Also on October 8, 2009, Defendant Merscorp, Inc. a Virginia Corporation

<sup>1</sup> Plaintiff has specifically referenced NRS 247.200 in that the name Defendants have failed to record any and all documents effecting real property, which would allow Plaintiff to specifically name the successors in interest to the original Note, or determine the assignees, or parties claiming interest in said note or Deed of Trust had the statute been followed.

<sup>2</sup> Said Defendant did not disclose its standing other than appearing as a named defendant. (it is unclear as to what interest the Defendant has in the action—i.e. collection company (servicer); assignee, or holder of any interest.)

1 MORTGAGE ELECTRONIC REGISTRATION SYYSTEM, INC., a Subsidiary of  
 2 MERSCORP, INC. a Delaware Corporation filed a "Certificate of Interest", simply  
 3 declaring that: "MERS is MERSCORP. Inc.; no public held corporation owns 10% or  
 4 more of MERS' Stock; MERSCORP, Inc. does not have a parent corporation; and  
 5 that Federal Home Loan Mortgage Corporation and the Federal national Mortgage  
 6 Association each owns 10% or more of MERSCORP, Inc.'s stock."<sup>3</sup>

7 **II.**

8  
 9 **ANY FEDERAL PROCEDURES SHOULD BE STAYED PENDING**  
 10  
 11 **MOTION TO REMAND DETERMINATION**

12 As noted above, Plaintiff has clearly presented to this Court that a review of  
 13 the entire Complaint filed in State Court does NOT disclose a substantial Federal  
 14 Question. On the contrary the causes of action affect specific land located in the  
 15 County and State where the Complaint was filed. The allegations concern conduct  
 16 of the named and unknown Defendants (to be determined) who were involved in  
 17 transactions in Nevada, and effecting real property in Nevada. Plaintiff has named  
 18 Defendants that are believed to be involved in the wrongs alleged, and contributed  
 19 to the causes of action resulting in establishing "false value of homes," and "false  
 20 approval of loans" Any the approval of the loan was only based on the ability to  
 21 pay the "first leg of the adjustable rate loan." In fact the alleged approval of  
 22 borrower regarding the entire loan was approved on a speculative anticipation of  
 23 "acquired equity," specifically prohibited by fair lending practices.

24  
 25  
 26 <sup>3</sup> Said Defendants again only appear as a named Defendant and do not disclose their standing as to being an  
 assignee, beneficiary, holder, or as to what interest they may have in the controversy.

1 Plaintiff (s) have clearly shown that there are named Nevada residents  
2 currently known and others who will be determined that were involved in the  
3 transaction and occurrences. This presentation of named and anticipated  
4 Defendants clearly indicates that there is NOT complete diversity of citizenship to  
5 warrant removal to Federal Court.

7 The Plaintiff should not be required to proceed in any Federal Procedures  
8 until the Remand Motion is determined, because any actions taken in Federal  
9 Court by any named Defendants may have to be answered under Nevada State  
10 Law, or Nevada State Rules of Procedures.

12 An Order should enter staying all Federal Proceedings pending Remand  
13 Motions.

14 III.

15 **DEFENDANTS THAT HAVE APPEARED IN THE ACTION HAVE NOT**  
16 **DISCLOSED THEIR INTEREST OF STANDING (other than simply appearing**  
17 **as a named Defendant) PLAINTIFF REQUESTS DEFENDANTS DISCLOSE**  
18 **ANY KNOWLEDGE OF "INDISPENSABLE PARTIES" (and their relationship**  
19 **thereto)**

21 Plaintiff has raised substantial questions in his Complaint regarding  
22 violations of the **Nevada Fair Lending action (NRS 598D.100)**; violations of  
23 **Nevada's Mortgage Lending Fraud (NS 205.372; and the Nevada Racketeering**  
24 **Act (NRS 207.470)**. The allegations are directed at the initial participants in the  
25 procurement of the loan granted to Plaintiff. The allegations include the causes of  
26 action by way of conspiracy, as well as ratification by subsequent assignees,

holders, collection companies (servicers), and known and unknown individual Nevada residents who participated in the luring of Plaintiff into a loan in violation of not only the Statutes noted herein but the common law claims.

The Defendants that have appeared, have not indicated their interest in the controversy (other than merely appearing as a named Defendant), Plaintiff is concerned that by failing to comply with NRS 247.200 there is no way to determine all necessary parties that should be included in this action. Clearly, NRS 247.200 notes: as follows:

**“Documents affecting real property to be recorded in county where situated”**

A document affecting real property must be recorded in the office of the county recorder of the county in which the real property is situated." (emphasis added)

Plaintiff represented to the Court that the Defendants that have appeared in this action, have personal knowledge of specific assignments, transfers, pledges, or other interests belonging to Parties named, and unknown to Plaintiff regarding the Note and Deed of Trust the subject of the litigation.

Unless the Defendants who have appeared are ordered to disclose all interests they have regarding the Note the Deed of Trust, and the transactions complained and disclose their knowledge of unrecorded assignments, transfers, or pledges, Plaintiff may be faced with not being able to include an **“indispensable party.”** [ i.e. the holder of the Note, AND true beneficiary of the Deed of Trust, or any holder of equitable interest therein ]

1           There are various interests that are suggested in the Complaint, an example  
2 of interest is examined in Ainsworth v. Combined Ins. Co. of America, 774 P.2d  
3 1003, 105 Nev. 237 (Nev., 1989). In examining Judicial Cannons, the Court  
4 somewhat explains real and equitable interest as follows:  
5

6           "....[105 Nev. 276] (a) The degree of relationship is calculated according to the  
7 civil law system;

8           (b) "Fiduciary" includes such relationships as executor, administrator, trustee,  
9 and guardian;

10           (c) "Financial interest" means ownership of a legal or equitable interest, however  
11 small, or a relationship as director, advisor, or other participant in the affairs of a  
12 party,...."

13           It is Plaintiff's position and request made herein, that unless full disclosure as to  
14 the interest of the Defendants who have appeared to date, and any knowledge by  
15 them of other interested parties establishing their participation of the initial  
16 transaction, or the on-going transaction would affect the controversy, not only  
17 regarding parties but possible jurisdiction challenges.

18           The law is clear, that, Civil Rules of Nevada Courts (and the similar Federal  
19 Rule) indicates:

20           **"RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION**

21           **(a) Persons to Be Joined if Feasible.** A person who is subject to  
22 service of process and whose joinder will not deprive the court of  
23 jurisdiction over the subject matter of the action shall be joined as a  
24 party in the action if (1) in the person's absence complete relief cannot  
25 be accorded among those already parties, or (2) the person claims an  
26 interest relating to the subject of the action and is so situated that the

1 disposition of the action in the person's absence may (i) as a practical  
 2 matter impair or impede the person's ability to protect that interest or  
 3 (ii) leave any of the persons already parties subject to a substantial  
 4 risk of incurring double, multiple, or otherwise inconsistent obligations  
 5 by reason of the claimed interest. If the person has not been so joined,  
 6 the court shall order that the person be made a party. If the person  
 7 should join as a plaintiff but refuses to do so, the person may be made  
 8 a defendant, or, in a proper case, an involuntary plaintiff....

9  
 10  
 11  
 12  
 13  
 14  
**(b) Determination by Court Whenever Joinder Not Feasible.** If a  
 15 person as described in subdivision (a)(1)-(2) hereof cannot be made a  
 16 party, the court shall determine whether in equity and good  
 17 conscience the action should proceed among the parties before it, or  
 18 should be dismissed, the absent person being thus regarded as  
 19 indispensable. The factors to be considered by the court include: first,  
 20 to what extent a judgment rendered in the person's absence might be  
 21 prejudicial to the person or those already parties; second, the extent to  
 22 which, by protective provisions in the judgment, by the shaping of  
 23 relief, or other measures, the prejudice can be lessened or avoided;  
 24 third, whether a judgment rendered in the person's absence will be  
 25 adequate; fourth, whether the plaintiff will have an adequate remedy if  
 the action is dismissed for nonjoinder.

26  
 27  
 28  
**(c) Pleading Reasons for Nonjoinder.** A pleading asserting a claim  
 29 for relief shall state the names, if known to the pleader, of any persons  
 30 as described in subdivision (a)(1)-(2) hereof who are not joined, and  
 31 the reasons why they are not joined."

32  
 33  
 34  
 35  
 36  
 37  
 38  
 39  
 40  
 41  
 42  
 43  
 44  
 45  
 46  
 47  
 48  
 49  
 50  
 51  
 52  
 53  
 54  
 55  
 56  
 57  
 58  
 59  
 60  
 61  
 62  
 63  
 64  
 65  
 66  
 67  
 68  
 69  
 70  
 71  
 72  
 73  
 74  
 75  
 76  
 77  
 78  
 79  
 80  
 81  
 82  
 83  
 84  
 85  
 86  
 87  
 88  
 89  
 90  
 91  
 92  
 93  
 94  
 95  
 96  
 97  
 98  
 99  
 100  
 101  
 102  
 103  
 104  
 105  
 106  
 107  
 108  
 109  
 110  
 111  
 112  
 113  
 114  
 115  
 116  
 117  
 118  
 119  
 120  
 121  
 122  
 123  
 124  
 125  
 126  
 127  
 128  
 129  
 130  
 131  
 132  
 133  
 134  
 135  
 136  
 137  
 138  
 139  
 140  
 141  
 142  
 143  
 144  
 145  
 146  
 147  
 148  
 149  
 150  
 151  
 152  
 153  
 154  
 155  
 156  
 157  
 158  
 159  
 160  
 161  
 162  
 163  
 164  
 165  
 166  
 167  
 168  
 169  
 170  
 171  
 172  
 173  
 174  
 175  
 176  
 177  
 178  
 179  
 180  
 181  
 182  
 183  
 184  
 185  
 186  
 187  
 188  
 189  
 190  
 191  
 192  
 193  
 194  
 195  
 196  
 197  
 198  
 199  
 200  
 201  
 202  
 203  
 204  
 205  
 206  
 207  
 208  
 209  
 210  
 211  
 212  
 213  
 214  
 215  
 216  
 217  
 218  
 219  
 220  
 221  
 222  
 223  
 224  
 225  
 226  
 227  
 228  
 229  
 230  
 231  
 232  
 233  
 234  
 235  
 236  
 237  
 238  
 239  
 240  
 241  
 242  
 243  
 244  
 245  
 246  
 247  
 248  
 249  
 250  
 251  
 252  
 253  
 254  
 255  
 256  
 257  
 258  
 259  
 260  
 261  
 262  
 263  
 264  
 265  
 266  
 267  
 268  
 269  
 270  
 271  
 272  
 273  
 274  
 275  
 276  
 277  
 278  
 279  
 280  
 281  
 282  
 283  
 284  
 285  
 286  
 287  
 288  
 289  
 290  
 291  
 292  
 293  
 294  
 295  
 296  
 297  
 298  
 299  
 300  
 301  
 302  
 303  
 304  
 305  
 306  
 307  
 308  
 309  
 310  
 311  
 312  
 313  
 314  
 315  
 316  
 317  
 318  
 319  
 320  
 321  
 322  
 323  
 324  
 325  
 326  
 327  
 328  
 329  
 330  
 331  
 332  
 333  
 334  
 335  
 336  
 337  
 338  
 339  
 340  
 341  
 342  
 343  
 344  
 345  
 346  
 347  
 348  
 349  
 350  
 351  
 352  
 353  
 354  
 355  
 356  
 357  
 358  
 359  
 360  
 361  
 362  
 363  
 364  
 365  
 366  
 367  
 368  
 369  
 370  
 371  
 372  
 373  
 374  
 375  
 376  
 377  
 378  
 379  
 380  
 381  
 382  
 383  
 384  
 385  
 386  
 387  
 388  
 389  
 390  
 391  
 392  
 393  
 394  
 395  
 396  
 397  
 398  
 399  
 400  
 401  
 402  
 403  
 404  
 405  
 406  
 407  
 408  
 409  
 410  
 411  
 412  
 413  
 414  
 415  
 416  
 417  
 418  
 419  
 420  
 421  
 422  
 423  
 424  
 425  
 426  
 427  
 428  
 429  
 430  
 431  
 432  
 433  
 434  
 435  
 436  
 437  
 438  
 439  
 440  
 441  
 442  
 443  
 444  
 445  
 446  
 447  
 448  
 449  
 450  
 451  
 452  
 453  
 454  
 455  
 456  
 457  
 458  
 459  
 460  
 461  
 462  
 463  
 464  
 465  
 466  
 467  
 468  
 469  
 470  
 471  
 472  
 473  
 474  
 475  
 476  
 477  
 478  
 479  
 480  
 481  
 482  
 483  
 484  
 485  
 486  
 487  
 488  
 489  
 490  
 491  
 492  
 493  
 494  
 495  
 496  
 497  
 498  
 499  
 500  
 501  
 502  
 503  
 504  
 505  
 506  
 507  
 508  
 509  
 510  
 511  
 512  
 513  
 514  
 515  
 516  
 517  
 518  
 519  
 520  
 521  
 522  
 523  
 524  
 525  
 526  
 527  
 528  
 529  
 530  
 531  
 532  
 533  
 534  
 535  
 536  
 537  
 538  
 539  
 540  
 541  
 542  
 543  
 544  
 545  
 546  
 547  
 548  
 549  
 550  
 551  
 552  
 553  
 554  
 555  
 556  
 557  
 558  
 559  
 560  
 561  
 562  
 563  
 564  
 565  
 566  
 567  
 568  
 569  
 570  
 571  
 572  
 573  
 574  
 575  
 576  
 577  
 578  
 579  
 580  
 581  
 582  
 583  
 584  
 585  
 586  
 587  
 588  
 589  
 590  
 591  
 592  
 593  
 594  
 595  
 596  
 597  
 598  
 599  
 600  
 601  
 602  
 603  
 604  
 605  
 606  
 607  
 608  
 609  
 610  
 611  
 612  
 613  
 614  
 615  
 616  
 617  
 618  
 619  
 620  
 621  
 622  
 623  
 624  
 625  
 626  
 627  
 628  
 629  
 630  
 631  
 632  
 633  
 634  
 635  
 636  
 637  
 638  
 639  
 640  
 641  
 642  
 643  
 644  
 645  
 646  
 647  
 648  
 649  
 650  
 651  
 652  
 653  
 654  
 655  
 656  
 657  
 658  
 659  
 660  
 661  
 662  
 663  
 664  
 665  
 666  
 667  
 668  
 669  
 670  
 671  
 672  
 673  
 674  
 675  
 676  
 677  
 678  
 679  
 680  
 681  
 682  
 683  
 684  
 685  
 686  
 687  
 688  
 689  
 690  
 691  
 692  
 693  
 694  
 695  
 696  
 697  
 698  
 699  
 700  
 701  
 702  
 703  
 704  
 705  
 706  
 707  
 708  
 709  
 710  
 711  
 712  
 713  
 714  
 715  
 716  
 717  
 718  
 719  
 720  
 721  
 722  
 723  
 724  
 725  
 726  
 727  
 728  
 729  
 730  
 731  
 732  
 733  
 734  
 735  
 736  
 737  
 738  
 739  
 740  
 741  
 742  
 743  
 744  
 745  
 746  
 747  
 748  
 749  
 750  
 751  
 752  
 753  
 754  
 755  
 756  
 757  
 758  
 759  
 760  
 761  
 762  
 763  
 764  
 765  
 766  
 767  
 768  
 769  
 770  
 771  
 772  
 773  
 774  
 775  
 776  
 777  
 778  
 779  
 780  
 781  
 782  
 783  
 784  
 785  
 786  
 787  
 788  
 789  
 790  
 791  
 792  
 793  
 794  
 795  
 796  
 797  
 798  
 799  
 800  
 801  
 802  
 803  
 804  
 805  
 806  
 807  
 808  
 809  
 810  
 811  
 812  
 813  
 814  
 815  
 816  
 817  
 818  
 819  
 820  
 821  
 822  
 823  
 824  
 825  
 826  
 827  
 828  
 829  
 830  
 831  
 832  
 833  
 834  
 835  
 836  
 837  
 838  
 839  
 840  
 841  
 842  
 843  
 844  
 845  
 846  
 847  
 848  
 849  
 850  
 851  
 852  
 853  
 854  
 855  
 856  
 857  
 858  
 859  
 860  
 861  
 862  
 863  
 864  
 865  
 866  
 867  
 868  
 869  
 870  
 871  
 872  
 873  
 874  
 875  
 876  
 877  
 878  
 879  
 880  
 881  
 882  
 883  
 884  
 885  
 886  
 887  
 888  
 889  
 890  
 891  
 892  
 893  
 894  
 895  
 896  
 897  
 898  
 899  
 900  
 901  
 902  
 903  
 904  
 905  
 906  
 907  
 908  
 909  
 910  
 911  
 912  
 913  
 914  
 915  
 916  
 917  
 918  
 919  
 920  
 921  
 922  
 923  
 924  
 925  
 926  
 927  
 928  
 929  
 930  
 931  
 932  
 933  
 934  
 935  
 936  
 937  
 938  
 939  
 940  
 941  
 942  
 943  
 944  
 945  
 946  
 947  
 948  
 949  
 950  
 951  
 952  
 953  
 954  
 955  
 956  
 957  
 958  
 959  
 960  
 961  
 962  
 963  
 964  
 965  
 966  
 967  
 968  
 969  
 970  
 971  
 972  
 973  
 974  
 975  
 976  
 977  
 978  
 979  
 980  
 981  
 982  
 983  
 984  
 985  
 986  
 987  
 988  
 989  
 990  
 991  
 992  
 993  
 994  
 995  
 996  
 997  
 998  
 999  
 1000  
 1001  
 1002  
 1003  
 1004  
 1005  
 1006  
 1007  
 1008  
 1009  
 1010  
 1011  
 1012  
 1013  
 1014  
 1015  
 1016  
 1017  
 1018  
 1019  
 1020  
 1021  
 1022  
 1023  
 1024  
 1025  
 1026  
 1027  
 1028  
 1029  
 1030  
 1031  
 1032  
 1033  
 1034  
 1035  
 1036  
 1037  
 1038  
 1039  
 1040  
 1041  
 1042  
 1043  
 1044  
 1045  
 1046  
 1047  
 1048  
 1049  
 1050  
 1051  
 1052  
 1053  
 1054  
 1055  
 1056  
 1057  
 1058  
 1059  
 1060  
 1061  
 1062  
 1063  
 1064  
 1065  
 1066  
 1067  
 1068  
 1069  
 1070  
 1071  
 1072  
 1073  
 1074  
 1075  
 1076  
 1077  
 1078  
 1079  
 1080  
 1081  
 1082  
 1083  
 1084  
 1085  
 1086  
 1087  
 1088  
 1089  
 1090  
 1091  
 1092  
 1093  
 1094  
 1095  
 1096  
 1097  
 1098  
 1099  
 1100  
 1101  
 1102  
 1103  
 1104  
 1105  
 1106  
 1107  
 1108  
 1109  
 1110  
 1111  
 1112  
 1113  
 1114  
 1115  
 1116  
 1117  
 1118  
 1119  
 1120  
 1121  
 1122  
 1123  
 1124  
 1125  
 1126  
 1127  
 1128  
 1129  
 1130  
 1131  
 1132  
 1133  
 1134  
 1135  
 1136  
 1137  
 1138  
 1139  
 1140  
 1141  
 1142  
 1143  
 1144  
 1145  
 1146  
 1147  
 1148  
 1149  
 1150  
 1151  
 1152  
 1153  
 1154  
 1155  
 1156  
 1157  
 1158  
 1159  
 1160  
 1161  
 1162  
 1163  
 1164  
 1165  
 1166  
 1167  
 1168  
 1169  
 1170  
 1171  
 1172  
 1173  
 1174  
 1175  
 1176  
 1177  
 1178  
 1179  
 1180  
 1181  
 1182  
 1183  
 1184  
 1185  
 1186  
 1187  
 1188  
 1189  
 1190  
 1191  
 1192  
 1193  
 1194  
 1195  
 1196  
 1197  
 1198  
 1199  
 1200  
 1201  
 1202  
 1203  
 1204  
 1205  
 1206  
 1207  
 1208  
 1209  
 1210  
 1211  
 1212  
 1213  
 1214  
 1215  
 1216  
 1217  
 1218  
 1219  
 1220  
 1221  
 1222  
 1223  
 1224  
 1225  
 1226  
 1227  
 1228  
 1229  
 1230  
 1231  
 1232  
 1233  
 1234  
 1235  
 1236  
 1237  
 1238  
 1239  
 1240  
 1241  
 1242  
 1243  
 1244  
 1245  
 1246  
 1247  
 1248  
 1249  
 1250  
 1251  
 1252  
 1253  
 1254  
 1255  
 1256  
 1257  
 1258  
 1259  
 1260  
 1261  
 1262  
 1263  
 1264  
 1265  
 1266  
 1267  
 1268  
 1269  
 1270  
 1271  
 1272  
 1273  
 1274  
 1275  
 1276  
 1277  
 1278  
 1279  
 1280  
 1281  
 1282  
 1283  
 1284  
 1285  
 1286  
 1287  
 1288  
 1289  
 1290  
 1291  
 1292  
 1293  
 1294  
 1295  
 1296  
 1297  
 1298  
 1299  
 1300  
 1301  
 1302  
 1303  
 1304  
 1305  
 1306  
 1307  
 1308  
 1309  
 1310  
 1311  
 1312  
 1313  
 1314  
 1315  
 1316  
 1317  
 1318  
 1319  
 1320  
 1321  
 1322  
 1323  
 1324  
 1325  
 1326  
 1327  
 1328  
 1329  
 1330  
 1331  
 1332  
 1333  
 1334  
 1335  
 1336  
 1337  
 1338  
 1339  
 1340  
 1341  
 1342  
 1343  
 1344  
 1345  
 1346  
 1347  
 1348  
 1349  
 1350  
 1351  
 1352  
 1353  
 1354  
 1355  
 1356  
 1357  
 1358  
 1359  
 1360  
 1361  
 1362  
 1363  
 1364  
 1365  
 1366  
 1367  
 1368  
 1369  
 1370  
 1371  
 1372  
 1373  
 1374  
 1375  
 1376  
 1377  
 1378  
 1379  
 1380  
 1381  
 1382  
 1383  
 1384  
 1385  
 1386  
 1387  
 1388  
 1389  
 1390  
 1391  
 1392  
 1393  
 1394  
 1395  
 1396  
 1397  
 1398  
 1399  
 1400  
 1401  
 1402  
 1403  
 1404  
 1405  
 1406  
 1407  
 1408  
 1409  
 1410  
 1411  
 1412  
 1413  
 1414  
 1415  
 1416  
 1417  
 1418  
 1419  
 1420  
 1421  
 1422  
 1423  
 1424  
 1425  
 1426  
 1427  
 1428  
 1429  
 1430  
 1431  
 1432  
 1433  
 1434  
 1435  
 1436  
 1437  
 1438  
 1439  
 1440  
 1441  
 1442  
 1443  
 1444  
 1445  
 1446  
 1447  
 1448  
 1449  
 1450  
 1451  
 1452  
 1453  
 1454  
 1455  
 1456  
 1457  
 1458  
 1459  
 1460  
 1461  
 1462  
 1463  
 1464  
 1465  
 1466  
 1467  
 1468  
 1469  
 1470  
 1471  
 1472  
 1473  
 1474  
 1475  
 1476  
 1477  
 1478  
 1479  
 1480  
 1481  
 1482  
 1483  
 1484  
 1485  
 1486  
 1487  
 1488  
 1489  
 1490  
 1491  
 1492  
 1493  
 1494  
 1495  
 1496  
 1497  
 1498  
 1499  
 1500  
 1501  
 1

1 (1982) the failure to join an indispensable party is fatal to a judgment and may be  
 2 raised by an appellate court *sua sponte*.  
 3

4 It is also clear that NRCP Rule 41 notes that:  
 5

6 **"RULE 41. DISMISSAL OF ACTIONS"**  
 7

8 **(2) By Order of Court.** Except as provided in subdivision (a)(1) of this  
 9 rule, an action shall not be dismissed at the plaintiff's instance save  
 10 upon order of the court and upon such terms and conditions as the  
 11 court deems proper. If a counterclaim has been pleaded by a  
 12 defendant prior to the service upon the defendant of the plaintiff's  
 13 motion to dismiss, the action shall not be dismissed against the  
 14 defendant's objection unless the counterclaim can remain pending for  
 15 independent adjudication by the court. Unless otherwise specified in  
 16 the order, a dismissal under this paragraph is without prejudice.  
 17

18 **(b) Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff  
 19 to comply with these rules or any order of court, a defendant may  
 20 move for dismissal of an action or of any claim against the defendant.  
 21 Unless the court in its order for dismissal otherwise specifies, a  
 22 dismissal under this subdivision and any dismissal not provided for in  
 23 this rule, other than a dismissal for lack of jurisdiction, for improper  
 24 venue, or for failure to join a party under Rule 19<sup>4</sup>, operates as an  
 25 adjudication upon the merits.  
 26

In *Potts v. Vokits* 101 Nev. 90, 692 P.2d 1304 (1985)

...An indispensable party is a party who is "necessary" to an action but who, for some reason, cannot be made a party to that action. If a necessary party is found to be unavailable, the court must decide

<sup>4</sup> In 1953 the federal rule was revised to eliminate failure to prosecute as a ground for dismissal, since this is covered later. The phrase "failed to prove a sufficient case for the court or jury" was substituted for the phrase "shown no right to relief." The third and fourth sentences, reading "In an action . . . Rule 52(a)." were deleted. The purpose was to retain existing Nevada law, so that every inference in favor of plaintiff must be drawn upon a motion to dismiss. The court, though acting without a jury, is not to consider weight or credibility upon this motion. Dismissal for improper venue was deleted. The 1964 amendment adopts, in part, the 1963 federal rule amendment to provide that dismissal for lack of an **indispensable party** is not an adjudication on the merits. In 1971, the rule was further revised in accordance with the federal amendment, effective July 1, 1966.

whether in equity and good conscience the action should proceed. If in equity and good conscience the action cannot proceed without the necessary party, that party is "indispensable" and the case must be dismissed. NRCP 19(b)....."

Also in, *Calcote v. Texas Pac. Coal & Oil Co.*, 157 F.2d 216 (5th Cir., 1946).

“... In diversity cases, the question of indispensable party is inherent in the issue of federal jurisdiction, the determination of which should never await a decision on the merits if the complaint states a cause of action. Jurisdictional questions come first in the orderly disposition of a case. A precarious jurisdiction that limits the scope of judicial decision on the merits cannot be entertained. The same limitation would restrict review on appeal, even on certiorari, and no one could tell whether the court had jurisdiction until it had determined the merits of the controversy. The cases cited by appellee in its supplemental brief, to the effect that the judgment rendered would not interfere with any rights of the royalty owners, may be distinguished from the instant case because they have reference to rights that would continue to exist irrespective of the outcome of the suit..... It is argued that appellee has not raised the question, and that appellants may not now object, having brought the suit without joining indispensable party as plaintiffs or defendants; but it was within the power of the court below to raise the issue of its own motion, since federal jurisdiction depended wholly upon diversity of citizenship and it was impossible to determine whether such diversity existed unless all indispensable parties were before the court and the citizenship of each was a matter of record. Section 50 of the Judicial Code<sup>3</sup> [SEE: Cameron v. McRoberts, 3 Wheat. 591, 4 L.Ed. 467; Shields v. Barrow, 17 How. 130, 15 L.Ed. 158; Kendig v. Dean, 97 U.S. 423, 24 L.Ed. 1061; Gregory v. Stetson, 133 U.S. 579, 10 S.Ct. 422, 33 L.Ed. 792; New Orleans Waterworks v. City of New Orleans, 164 U.S. 471, 17 S.Ct. 161, 41 L.Ed. 518; Niles-Bement-Pond Co. v. Iron Moulders Union, 254 U.S. 77, 41 S.Ct. 39, 65 L.Ed. 145; United Shoe Machinery Co. v. United States, 258 U.S. 451, 42 S.Ct. 363, 66 L.Ed. 708; Commonwealth Trust Co. of Pittsburgh v. Smith, 266 U.S. 152, 45 S.Ct. 26, 69 L.Ed. 219.]...”

Looking to *Young v. Garrett*, 149 F.2d 223 (8th Cir., 1945) we also note that:

“...Rule 19(a) of Civil Procedure states that "persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants." As stated by the chairman of the committee

which drafted the Rules, this Rule "deals with what we call the necessary joinder of indispensable parties and gives the court power to bring in all parties needed to fully dispose of the case. It gives the court power to omit parties not indispensable if by joining them the court would be deprived of jurisdiction of the case." [SEE: This statement appears in Mr. Mitchell's "Second Lecture" on the Rules (West Publishing Co. print of the Rules, p. 182).] In respect to who are indispensable parties, this Rule is declaratory of the law (Equity Rule 37, 28 U.S.C.A. § 723 Appendix) as it existed before the Rule. [SEE: *Capital Fire Ins. Co. v. Langhorne*, 8 Cir., 146 F.2d 237, 241; *United States v. Washington Inst. of Technology*, 3 Cir., 138 F.2d 25, 26.]"

v

## CONCLUSION

Plaintiff represents that the Petition for removal was clearly in error as noted in the clear claims of the Complaint filed in State Court. Any Federal Proceedings should be suspended until the Court examines and grants Plaintiff's Motion For Remand.

Since Plaintiff has appeared in this Court with his Petition for removal, it is incumbent that Defendants be required to disclose those parties involved in the transaction and "necessary" for the proper adjudication of the matter. The failure to comply with NRS 247.200 should not be allowed with impunity, but should establish that each Defendant appearing in the action must and should establish their relationship and interest in the controversy and disclose those parties that are necessary and indispensable.

The causes of action are clear on the face of the Complaint, and the suggestion of substantial Federal Question is clearly erroneous. The claim if any, of complete diversity is also in error as established by the parties now name, and to be

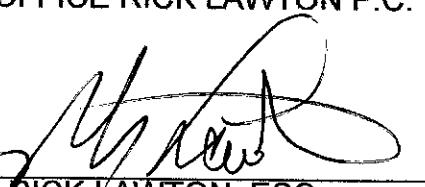
1 named. A ruling on the Motion To Remand should be made, prior to having Plaintiff  
2 be required to comply with any Federal Procedures.  
3

4 Defendants appearance by way of Petition For Removal, must not limit them  
5 to argument as to Federal Questions, and Diversity, but should include that  
6 requirement that they DISCLOSE THEIR INTEREST, and DISCLOSE THOSE  
7 PARTIES NECESSARY that should have been recorded in public records  
8 establishing "any documents effecting real property." The failure to so disclose  
9 would lead to either an involuntary dismissal, or additional litigation when the  
10 property parties are determined.  
11

12 The controversy before the Court is the borrower, the lender or successor in  
13 interest as to the true holder of the Note, and anyone who claims "real or equitable"  
14 interest in the Note, or Deed of Trust utilized to secure the payment of said Note.  
15

16 DATED: This 13<sup>th</sup> day of October, 2009.  
17

18 LAW OFFICE RICK LAWTON P.C.  
19

20 BY: 

21 RICK LAWTON, ESQ.  
22 State Bar # 00694  
23 5435 Reno Hwy  
Fallon, Nevada 89406  
(775) 867-5599  
(775) 867-2559

24 HAGER & HEARNE  
25

26 BY: 

ROBERT HAGER, ESQ.  
NEVADA STATE BAR # 1482  
245 East Liberty Street, Suite 110  
Reno, Nevada 89501  
(775) 329 5800  
(775) 329 5819 – facsimile

1

2

3

**CERTIFICATE OF SERVICE**

4

I hereby certify that on October 13<sup>th</sup>, 2009, I electronically filed the  
5 foregoing

6

**MOTION TO STAY ALL FEDERAL PROCEEDINGS UNTIL THE MOTION TO  
REMAND TO THE THIRD JUDICIAL DISTRICT, STATE OF NEVADA IS HEARD  
DEMAND FOR DISCLOSURE OF INDISPENSABLE PARTY**

7

8 using the CM/ECF system which will send a notice of electronic filing to all parties as listed  
9 on the Notice of Electronic Filing.

10

11

12

13 /s/ Lavinia Johnson  
Lavinia Johnston

14

15

16

17

18

19

20

21

22

23

24

25

26